IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

W.A.No.1326 of 2003 and
W.P.Nos.9601 of 2001 &
28574 and 39675 of 2004
&
WPMP Nos.34699 and 47306 of 2004

The Tamil Nadu Civil Supplies
Corporation Ltd.,
Rep. By its Senior Regional
Manager, Chennai
(North Region) Chennai 86 .. Appellant

-vs-

T.Balasubramanian .. Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 03.10.2002 made in W.P.No.37467 of 2002.

IN WRIT APPEAL:

For Appellant : Mr.V.Selvanayagam
For Respondent : Mr.S.Venkataraman

IN W.Ps.9601 of 2001
and 39675 of 2004:

For petitioner : Mr.S.Venkataraman
For Respondent : Mr.V.Selvanayagam (IN WP.9601/01)
Mr.S.Ramachandran (IN WP39675/04)

J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

Since the issue raised is one and the same and inter connected, the writ appeal and the writ petitions are being disposed of by the following common order.

2. The Writ Appeal No.1326 of 2003 is filed against the order of the learned single Judge dated 03.10.2002 made in W.P.No.37467 of 2002, in and by which, the learned Judge permitted the writ petitioner to engage a lawyer to contest the disciplinary action initiated against him.

3. After disposal of the writ petition, the Civil Supplies Corporation, by filing the present writ appeal obtained an order of stay. By getting an order of stay, the Corporation proceeded with the enquiry ex parte. Questioning the said proceedings, the writ petitioner filed W.P.No.28574 of 2004. Pursuant to the order of stay, the Corporation after proceeding with the enquiry, based on the report of the Enquiry Officer, initiated recovery proceedings. Challenging the said proceedings dated 20.10.2004, the petitioner filed W.P.No.39675 of 2004. Even before filing the above two writ petitions, the writ petitioner complaining that he was not paid subsistence allowance and questioning the proceedings dated 27.04.2001, approached this Court by way of filing W.P.No.9601 of 2001.

4. At the foremost, let us dispose of the writ appeal filed by the Civil Supplies Corporation. It is not in dispute that there is no provision in the Tamil Nadu Civil Supplies Corporation Service Rules enabling the delinquent to have the assistance of a lawyer in the disciplinary proceedings. It is also not in dispute that the Officer representing the Civil Supplies Corporation is a law graduate or trained in legal proceedings. In such circumstances, Mr.S.Venkataraman, learned counsel appearing for the respondent in the writ appeal admitted that there cannot be any direction to the Corporation to engage a lawyer in the disciplinary proceedings. In view of the position as seen from the Service Rules, we are of the view that the direction of the learned Judge permitting the writ petitioner to engage a lawyer in the disciplinary proceedings cannot be sustained. The said order of the learned Judge dated 03.10.2002 is set aside.

5. As stated earlier, by filing an appeal against the order dated 03.10.2002 and after obtaining an interim order, the Civil Supplies Corporation proceeded with the enquiry and in fact issued recovery proceedings. Inasmuch the writ appeal is kept pending, we are of the view that the Civil Supplies Corporation could have waited till final order being passed in the writ appeal. In view of our conclusion in the writ appeal and of the fact that enquiry is to be proceeded without the assistance of a lawyer, we are of the view that the consequential proceedings/orders passed by the Civil Supplies Corporation cannot be sustained. Accordingly, the proceedings of the Corporation in Na.Ka.No.A17/194/2001 dated 21.09.2004 and Na.Ka.No.S9/5784/01 dated 20.10.2004 are quashed.

6. In so far as W.P.No.9601 of 2001 is concerned, Mr.S.Venkataraman, the learned counsel appearing for the petitioner submits that as per the latest Board's Resolution in Proc.No.AB3/45833/2005 dated 06.01.2006 amending the Service Rules, the petitioner is entitled to subsistence allowance for a period of six months. In view of the same and of the fact that we are permitting the Civil Supplies Corporation to proceed afresh with the enquiry proceedings without the assistance of a lawyer, we direct the Civil Supplies Corporation to pay subsistence allowance in terms of the Board's Resolution. On payment of the subsistence allowance as mentioned above, the Civil Supplies Corporation is free to complete the enquiry within six months thereafter. The writ appeal and the writ petitions are ordered accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

gms

To

The Senior Regional Manager,
Tamil Nadu Civil Supplies
Corporation Ltd.,
Chennai
(North Region) Chennai 86

[SANT/9893]